

107TH CONGRESS
1ST SESSION

H. R. 728

To amend the Elementary and Secondary Education Act of 1965 to authorize grants for the repair, renovation, alteration, and construction of public elementary and secondary school facilities.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2001

Mr. ANDREWS introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Elementary and Secondary Education Act of 1965 to authorize grants for the repair, renovation, alteration, and construction of public elementary and secondary school facilities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SCHOOL FACILITIES INFRASTRUCTURE IM-**
4 **PROVEMENT.**

5 Title XII of the Elementary and Secondary Edu-
6 cation Act of 1965 (20 U.S.C. 8501 et seq.) is amended
7 to read as follows:

1 **“SEC. 12001. PROGRAM AUTHORIZED.**

2 “(a) IN GENERAL.—From the amount appropriated
3 for any fiscal year to carry out this title, Secretary shall
4 award grants to States and local educational agencies with
5 applications approved under this section to carry out the
6 authorized activities described in section 12002.

7 “(b) ONE-THIRD ALLOCATED AMONG STATES.—

8 “(1) IN GENERAL.—One-third of the amount
9 appropriated for any fiscal year to carry out this
10 title shall be allocated among the States under para-
11 graph (2) by the Secretary. The amount allocated to
12 a State under the preceding sentence shall be allo-
13 cated by the State educational agency to local edu-
14 cational agencies within such State and such alloca-
15 tions may be made only if there is an approved State
16 application.

17 “(2) ALLOCATION FORMULA.—The amount to
18 be allocated under paragraph (1) for any fiscal year
19 shall be allocated among the States in proportion to
20 the respective amounts each such State received for
21 basic grants under subpart 2 of part A of title I for
22 the most recently completed fiscal year. For pur-
23 poses of the preceding sentence, basic grants attrib-
24 utable to large local educational agencies (as defined
25 in subsection (c)), and basic grants attributable to

high-growth local educational agencies (as defined in subsection (d)), shall be disregarded.

“(3) MINIMUM ALLOCATIONS TO STATES.—

“(A) IN GENERAL.—The Secretary shall adjust the allocations under this subsection for any fiscal year for each State to the extent necessary to ensure that the sum of—

“(i) the amount allocated to such State under this subsection for such year; and

“(ii) the aggregate amounts allocated under subsections (c) and (d) to local educational agencies in such State for such year;

is not less than an amount equal to such State’s minimum percentage of one-third of the amount appropriated for the fiscal year to carry out this title.

“(B) MINIMUM PERCENTAGE.—A State’s minimum percentage for any fiscal year is the minimum percentage described in section 1124(d) for such State for the most recently completed fiscal year.

“(4) ALLOCATIONS TO CERTAIN POSSESSIONS.—The amount to be allocated under para-

graph (1) to any outlying area shall be the amount which would have been allocated if all allocations under paragraph (1) were made on the basis of respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). In making other allocations, the amount to be allocated under paragraph (1) shall be reduced by the aggregate amount allocated under this paragraph to the outlying areas.

“(5) APPROVED STATE APPLICATION.—For purposes of paragraph (1), the term ‘approved State application’ means an application which is approved by the Secretary and which includes—

“(A) the results of a recent publicly available survey (undertaken by the State with the involvement of local education officials, members of the public, and experts in school construction and management) of such State’s needs for public school facilities, including descriptions of—

“(i) health and safety problems at such facilities;

“(ii) the capacity of public schools in the State to house projected enrollments; and

1 “(iii) the extent to which the public
2 schools in the State offer the physical in-
3 frastructure needed to provide a high-quality
4 education to all students; and

5 “(B) a description of how the State will al-
6 locate to local educational agencies, or other-
7 wise use, its allocation under this subsection to
8 address the needs identified under subpara-
9 graph (A), including a description of how it
10 will—

11 “(i) give highest priority to localities
12 with the greatest needs, as demonstrated
13 by inadequate school facilities coupled with
14 a low level of resources to meet those
15 needs;

16 “(ii) use its allocation under this sub-
17 section to assist localities that lack the fis-
18 cal capacity to raise funds on their own;
19 and

20 “(iii) ensure that its allocation under
21 this subsection is used only to supplement,
22 and not supplant, the amount of school
23 construction, rehabilitation, and repair in
24 the State that would have occurred in the
25 absence of such allocation.

1 Any allocation under paragraph (1) by a State edu-
 2 cation agency shall be binding if such agency reason-
 3 ably determined that the allocation was in accord-
 4 ance with the plan approved under this paragraph.

5 “(c) ONE-THIRD ALLOCATED AMONG LARGEST
 6 SCHOOL DISTRICTS.—

7 “(1) IN GENERAL.—One-third of the amount
 8 appropriated for any fiscal year to carry out this
 9 title shall be allocated under paragraph (2) by the
 10 Secretary among local educational agencies which
 11 are large local educational agencies for such year.
 12 An allocation may be made under this subsection to
 13 a large local educational agency only if such agency
 14 has an approved local application.

15 “(2) ALLOCATION FORMULA.—The amount to
 16 be allocated under paragraph (1) for any fiscal year
 17 shall be allocated among large local educational
 18 agencies in proportion to the respective amounts
 19 each such agency received for basic grants under
 20 subpart 2 of part A of title I for the most recently
 21 completed fiscal year.

22 “(3) LARGE LOCAL EDUCATIONAL AGENCY.—
 23 For purposes of this section, the term ‘large local
 24 educational agency’ means, with respect to a fiscal
 25 year, any local educational agency (other than a

1 high-growth local educational agency, as defined in
2 subsection (d)) if such agency is—

3 “(A) among the 100 local educational
4 agencies with the largest numbers of children
5 aged 5 through 17 from families living below
6 the poverty level, as determined by the Sec-
7 retary using the most recent data available
8 from the Department of Commerce that are
9 satisfactory to the Secretary; or

10 “(B) 1 of not more than 25 local edu-
11 cational agencies (other than those described in
12 subparagraph (A)) that the Secretary deter-
13 mines (based on the most recent data available
14 satisfactory to the Secretary) are in particular
15 need of assistance, based on a low level of re-
16 sources for school construction, a high level of
17 enrollment growth, or such other factors as the
18 Secretary deems appropriate.

19 “(4) APPROVED LOCAL APPLICATION.—For
20 purposes of paragraph (1), the term ‘approved local
21 application’ means an application which is approved
22 by the Secretary and which includes—

23 “(A) the results of a recent publicly-avail-
24 able survey (undertaken by the local educational
25 agency with the involvement of school officials,

1 members of the public, and experts in school
2 construction and management) of such agency’s
3 needs for public school facilities, including de-
4 scriptions of—

5 “(i) the overall condition of the local
6 educational agency’s school facilities, in-
7 cluding health and safety problems;

8 “(ii) the capacity of the agency’s
9 schools to house projected enrollments; and

10 “(iii) the extent to which the agency’s
11 schools offer the physical infrastructure
12 needed to provide a high-quality education
13 to all students;

14 “(B) a description of how the local edu-
15 cational agency will use its allocation under this
16 subsection to address the needs identified under
17 subparagraph (A); and

18 “(C) a description of how the local edu-
19 cational agency will ensure that its allocation
20 under this subsection is used only to supple-
21 ment, and not supplant, the amount of school
22 construction, rehabilitation, or repair in the lo-
23 cality that would have occurred in the absence
24 of such allocation.

1 A rule similar to the rule of the last sentence of sub-
2 section (b)(5) shall apply for purposes of this sub-
3 section.

4 “(d) ONE-THIRD ALLOCATED AMONG HIGH-
5 GROWTH SCHOOL DISTRICTS.—

6 “(1) IN GENERAL.—One-third of the amount
7 appropriated for any fiscal year to carry out this
8 title shall be allocated under paragraph (2) by the
9 Secretary among local educational agencies which
10 are high-growth local educational agencies for such
11 year. An allocation may be made under this sub-
12 section to a high-growth local educational agency
13 only if such agency has an approved local application
14 (as defined in subsection (c)(4)). A rule similar to
15 the rule of the last sentence of subsection (b)(5)
16 shall apply for purposes of this subsection.

17 “(2) ALLOCATION FORMULA.—The amount to
18 be allocated under paragraph (1) for any fiscal year
19 shall be allocated among high-growth local edu-
20 cational agencies in proportion to the respective
21 amounts each such agency received for basic grants
22 under subpart 2 of part A of title I for the most re-
23 cently completed fiscal year.

24 “(3) HIGH-GROWTH LOCAL EDUCATIONAL
25 AGENCY.—For purposes of this section, the term

1 ‘high-growth local educational agency’ means, with
2 respect to a fiscal year, any local educational agency
3 if—

4 “(A) there has been at least a 7.5 percent
5 increase in such agency’s enrollment during the
6 5-year period ending with the preceding fiscal
7 year; and

8 “(B) such enrollment increase exceeds 150
9 students.

10 **“SEC. 12002. AUTHORIZED ACTIVITIES.**

11 “(a) IN GENERAL.—Each entity receiving a grant
12 under this title shall use the grant funds only to ensure
13 the health and safety of students through the repair, ren-
14 ovation, alteration, and construction of a public elemen-
15 tary or secondary school library, media center, or facility,
16 used for academic or vocational instruction.

17 “(b) PARTICULAR ACTIVITIES.—Subject to sub-
18 section (a), each entity receiving a grant under this title
19 may use the grant funds to meet the requirements of sec-
20 tion 504 of the Rehabilitation Act of 1973 and the Ameri-
21 cans with Disabilities Act of 1990.

22 **“SEC. 12003. GENERAL PROVISIONS.**

23 “(a) BUDGET AND ACCOUNTING.—In the perform-
24 ance of, and with respect to, the functions, powers, and

1 duties under this title, the Secretary, notwithstanding the
2 provisions of any other law, shall—

3 “(1) prepare annually and submit a budget pro-
4 gram as provided for wholly owned Government cor-
5 porations by chapter 91 of title 31, United States
6 Code; and

7 “(2) maintain a set of accounts which shall be
8 audited by the Comptroller General in accordance
9 with the provisions of chapter 35 of title 31, United
10 States Code, but such financial transactions of the
11 Secretary, as the making of loans and vouchers ap-
12 proved by the Secretary, in connection with such fi-
13 nancial transactions shall be final and conclusive
14 upon all officers of the Government.

15 “(b) USE OF FUNDS.—Funds made available to the
16 Secretary pursuant to the provisions of this title shall be
17 deposited in a checking account or accounts with the
18 Treasurer of the United States. Receipts and assets ob-
19 tained or held by the Secretary in connection with the per-
20 formance of functions under this title, and all funds avail-
21 able for carrying out the functions of the Secretary under
22 this title (including appropriations therefor, which are
23 hereby authorized), shall be available, in such amounts as
24 may from year to year be authorized by the Congress, for

1 the administrative expenses of the Secretary in connection
2 with the performance of such functions.

3 “(c) LEGAL POWERS.—In the performance of, and
4 with respect to, the functions, powers, and duties under
5 this title, the Secretary, notwithstanding the provisions of
6 any other law, may—

7 “(1) prescribe such rules and regulations as
8 may be necessary to carry out the purposes of this
9 title;

10 “(2) sue and be sued;

11 “(3) foreclose on any property or commence any
12 action to protect or enforce any right conferred upon
13 the Secretary by any law, contract, or other agree-
14 ment, and bid for and purchase at any foreclosure
15 or any other sale any property in connection with
16 which the Secretary has made a loan pursuant to
17 this title;

18 “(4) in the event of any such acquisition, not-
19 withstanding any other provision of law relating to
20 the acquisition, handling, or disposal of real property
21 by the United States, complete, administer, remodel
22 and convert, dispose of, lease, and otherwise deal
23 with, such property, but any such acquisition of real
24 property shall not deprive any State or political sub-
25 division of such State civil or criminal jurisdiction in

1 and over such property or impair the civil rights
2 under the State or local laws of the inhabitants on
3 such property;

4 “(5) sell or exchange at public or private sale,
5 or lease, real or personal property, and sell or ex-
6 change any securities or obligations, upon such
7 terms as the Secretary may fix;

8 “(6) obtain insurance against loss in connection
9 with property and other assets held; and

10 “(7) include in any contract or instrument
11 made pursuant to this title such other covenants,
12 conditions, or provisions as may be necessary to as-
13 sure that the purposes of this title will be achieved.

14 “(d) CONTRACTS FOR SUPPLIES OR SERVICES.—Sec-
15 tion 3709 of the Revised Statutes shall not apply to any
16 contract for services or supplies on account of any prop-
17 erty acquired pursuant to this title if the amount of such
18 contract does not exceed \$1,000.

19 “(e) APPLICABILITY OF GOVERNMENT CORPORATION
20 CONTROL ACT.—The provisions of section 9107(a) of title
21 31, United States Code, which are applicable to corpora-
22 tions or agencies subject to chapter 91 of such title, shall
23 also be applicable to the activities of the Secretary under
24 this title.

1 **“SEC. 12004. FAIR WAGES.**

2 “All laborers and mechanics employed by contractors
3 or subcontractors in the performance of any contract and
4 subcontract for the repair, renovation, alteration, or con-
5 struction, including painting and decorating, of any build-
6 ing or work that is financed in whole or in part by a grant
7 under this title, shall be paid wages not less than those
8 determined by the Secretary of Labor in accordance with
9 the Act of March 3, 1931 (commonly known as the Davis-
10 Bacon Act); as amended (40 U.S.C. 276a–276a–5). The
11 Secretary of Labor shall have the authority and functions
12 set forth in reorganization plan of No. 14 of 1950 (15
13 FR 3176; 64 Stat. 1267) and section 2 of the Act of June
14 1, 1934 (commonly known as the Copeland Anti-Kickback
15 Act) as amended (40 U.S.C. 276c; 48 Stat. 948).

16 **“SEC. 12005. REQUIREMENTS.**

17 “(a) SPECIAL RULES.—

18 “(1) MAINTENANCE OF EFFORT.—An entity
19 may receive a grant under this title for any fiscal
20 year only if the Secretary finds that either the com-
21 bined fiscal effort per student or the aggregate ex-
22 penditures of that entity (or, in the case of a local
23 educational agency, that entity and the State), with
24 respect to the provision of free public education by
25 such entity for the preceding fiscal year was not less
26 than 90 percent of such combined fiscal effort or ag-

gregate expenditures for the fiscal year for which the determination is made.

“(2) SUPPLEMENT NOT SUPPLANT.—An entity shall use funds received under this title only to supplement the amount of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the repair, renovation, alteration, and construction of school facilities used for educational purposes, and not to supplant such funds.

“(b) GENERAL LIMITATIONS.—

“(1) REAL PROPERTY.—No part of any grant funds under this title shall be used for the acquisition of any interest in real property.

“(2) MAINTENANCE.—Nothing in this title shall be construed to authorize the payment of maintenance costs in connection with any projects constructed in whole or in part with Federal funds provided under this title.

“(3) ENVIRONMENTAL SAFEGUARDS.—All projects carried out with Federal funds provided under this title shall comply with all relevant Federal, State, and local environmental laws and regulations.

1 “(4) ATHLETIC AND SIMILAR FACILITIES.—No
2 funds received under this title shall be used for sta-
3 diums or other facilities that are primarily used for
4 athletic contests or exhibitions or other events for
5 which admission is charged to the general public.

6 **“SEC. 12006. FEDERAL ASSESSMENT.**

7 “The Secretary shall reserve not more than 1 percent
8 of the funds appropriated to carry out this title for each
9 fiscal year—

10 “(1) to collect such data as the Secretary deter-
11 mines necessary at the school, local, and State levels;

12 “(2) to conduct studies and evaluations, includ-
13 ing national studies and evaluations, in order to—

14 “(A) monitor the progress of projects sup-
15 ported with funds provided under this title; and

16 “(B) evaluate the state of United States
17 public elementary and secondary school librar-
18 ies, media centers, and facilities; and

19 “(3) to report to the Congress regarding the
20 findings of the studies and evaluations described in
21 paragraph (2).

22 **“SEC. 12007. TREATMENT OF CHARTER SCHOOLS.**

23 “A public charter school that constitutes a local edu-
24 cational agency under State law shall be eligible for assist-

1 ance under this title under the same terms and conditions
 2 as any other local educational agency.

3 **“SEC. 12008. PROMPT PAYMENT OF CONTRACTORS PER-**
 4 **FORMING FEDERALLY ASSISTED WORK.**

5 “The Secretary shall ensure that recipients of grants
 6 under this title promptly pay contractors performing fed-
 7 erally assisted work, or pay interest penalties in the same
 8 manner and to the same extent as provided in section
 9 3902 of title 31, United States Code (popularly known as
 10 the ‘Prompt Payment Act of 1982’).

11 **“SEC. 12009. DEFINITIONS.**

12 “For the purpose of this title—

13 “(1) the term ‘construction’ means the alter-
 14 ation or renovation of a building, structure, or facil-
 15 ity, including—

16 “(A) the concurrent installation of equip-
 17 ment; and

18 “(B) the complete or partial replacement
 19 of an existing facility, but only if such replace-
 20 ment is less expensive and more cost-effective
 21 than alteration, renovation, or repair of the fa-
 22 cility;

23 “(2) the term ‘school’ means a public structure
 24 suitable for use as a classroom, laboratory, library,
 25 media center, or related facility, the primary purpose

- 1 of which is the instruction of public elementary and
- 2 secondary school students.”.

